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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re *Ex Parte* Application of DEKA
INVESTMENT GMBH,

Applicant,

For an Order Granting Leave to Obtain
Discovery from BYRNE & NIXON LLP,

Respondent,

For Use in a Foreign Proceeding, Pursuant
to 28 U.S.C. § 1782

Misc. Action No.:

***EX PARTE* APPLICATION
FOR ORDER PURSUANT
TO 28 U.S.C. § 1782**

By its counsel, the applicant Deka Investment GmbH (“Deka” or the
“Applicant”) respectfully makes this *ex parte* Application for an order pursuant to

1 28 U.S.C. § 1782, authorizing the Applicant to serve a subpoena for the production
2 of documents on Byrne & Nixon LLP (“Byrne & Nixon” or the “Respondent”) for
3 use in a foreign litigation (the “Application”). This Application is supported by a
4 Memorandum of Law, Declaration of Alice Y. Lee, Esq., dated May 16, 2024 (“Lee
5 Declaration”), and exhibits thereto, and Declaration of Marc Schiefer, Esq., dated
6 May 16, 2024, and exhibits thereto, all filed concurrently herewith. A proposed
7 order is submitted herewith and a subpoena (the “Subpoena”) is attached to the Lee
8 Declaration as **Exhibit H**.

9 The Applicant seeks to serve a subpoena for the production of documents on
10 Byrne & Nixon for use in civil damages proceedings that the clients of Grant &
11 Eisenhofer P.A. filed against Volkswagen AG (“Volkswagen”) and Porsche
12 Automobil Holding SE (“Porsche”), both German corporations, in the Regional
13 Courts and the Higher Regional Courts of Braunschweig and Stuttgart, Germany
14 (collectively, the “German Actions”).

15 The German Actions were initiated against Volkswagen on March 16, 2016
16 and September 18, 2016, in the Regional Court of Braunschweig (*Landgericht*
17 *Braunschweig*) and against Porsche on September 18, 2016, in the Regional Court
18 in Stuttgart (*Landgericht Stuttgart*). By order dated March 8, 2017, the Higher
19 Regional Court of Braunschweig designated Deka as the Model Plaintiff against
20 Volkswagen and Deka's case as the model case.

21 This Application meets the requirements of Section 1782. The Applicant is a
22 plaintiff in the German Actions and thus an interested party for purposes of Section
23 1782, and the discovery it seeks is for use in the German Actions. The Applicant
24 has filed its application “in the district court in which [the] person resides or is
25 found,” as Byrne & Nixon has its offices in Los Angeles County and can thus be
26 found in this district. Neither Byrne & Nixon nor its former client James Robert
27 Liang is a party or anticipated party to the German Actions, which places them
28 beyond the German courts’ jurisdictional reach. Further, the Applicant is not using

1 this Application to circumvent foreign proof-taking restrictions, and the German
2 courts are receptive to U.S. court assistance. The discovery sought is highly relevant
3 to the German Actions and is neither burdensome nor unduly intrusive. *See Intel*
4 *Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 262-65 (2004). Granting this
5 Application would also further the twin aims of Section 1782 of providing an
6 efficient means of assistance to participants in international litigation and
7 encouraging foreign countries to provide similar means of assistance to U.S. courts
8 and litigants.

9 Section 1782 applications are commonly made and granted *ex parte* and –
10 after the application is authorized by the court and issued by the applicant – any
11 privilege issues or other challenges can be raised by the respondent and resolved via
12 a motion to quash pursuant to Fed. R. Civ. P. 45(d)(3), “which mitigates concerns
13 regarding any unfairness of granting the application *ex parte*.” *In re Align Tech.,*
14 *Inc.*, No. 2:22-MC-00236-SB-MAA, 2022 WL 18460717, at *3 (C.D. Cal. Dec. 15,
15 2022), *report and recommendation adopted*, No. 2:22-MC-00236-SB-MAA, 2023
16 WL 405316 (C.D. Cal. Jan. 24, 2023).

17 WHEREFORE, the Applicant respectfully requests that this Court enter an
18 Order:

19 1. granting the Application for discovery and permitting the issuance of a
20 subpoena substantially in the form of **Exhibit H** to the Lee Declaration submitted
21 herewith;

22 2. directing Byrne & Nixon to produce the documents in its possession,
23 custody, or control, as requested in Schedule A to the Subpoena; and

24 3. granting such other and further relief as the Court deems appropriate.
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1 Dated: May 21, 2024
2 Los Angeles, California

Respectfully submitted,

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4 **BY: /s/ JASON H. KIM**

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